UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANET TATUSKO,	:	
Plaintiff	:	Civil Action No. 3:04 CV 1828 (CFD)
v.	:	
	:	
GE CAPITAL CORPORATION,	:	
Defendant.	:	

RULING ON DEFENDANT'S MOTION TO DISMISS

Plaintiff Janet Tatusko originally brought this action in the Connecticut Superior Court against her former employer, GE Capital Corporation.[1] GE then removed the action to this Court pursuant to 28 U.S.C. § 1441.[2] Tatusko's complaint contains two counts: that she was unfairly terminated because of her sex, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Connecticut Fair Employment Act, Conn. Gen. Stat. § 46a-60 et seq.; and that she was unfairly terminated for her refusal to engage in deceptive and unethical business practices, which constituted a contractual breach by GE of the Connecticut common law covenant of good faith and fair dealing. She seeks compensatory and punitive damages for her allegedly unlawful termination.

Defendant GE has moved to dismiss Count Two of the complaint under Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. For the reasons that

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[1] The defendant claims that it was improperly named and that the proper defendant is GE Capital Corporation's subsidiary, GE Consumer Finance- Americas. Tatusko indeed states in her complaint that she was employed by the Consumer Finance unit of GE Capital. The defendant has not moved to re-caption the case, nor does the caption have any effect on the Court's ruling. In this opinion, the Court simply will refer to the defendant as "GE."

[2] This Court exercises subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1367.

follow, the defendant's motion is denied.

I. Standard of Review

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale-New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). Thus, a motion to dismiss under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994) (citations and internal quotations omitted), cert. denied, 513 U.S. 816 (1994). In its review of a 12(b)(6) motion to dismiss, the Court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

II. Discussion

Tatusko alleges in Count Two of her complaint that while she was working as a member

of GE's CRMS/Prospect Database Team in August 2002, she was requested to provide misleading information to one of GE's vendors, Experian. Tatusko claims that GE wanted her to act as if the company planned to contract with the vendor, in order to obtain confidential information about Experian that GE could later use for its own business purposes. Tatusko alleges that GE knew from the outset that it would never finalize such a contract, told her she would "suffer consequences" if she did not participate in the deception, and ultimately terminated her employment in March 2003 for refusing to take part in this scheme. For purposes of the motion to dismiss, GE has accepted Tatusko's allegations in Count Two but argues that she fails to make a cognizable claim under Connecticut law for breach of the implied covenant of good faith and fair dealing.

In Connecticut, "every contract carries an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." Habetz v. Condon, 224 Conn. 231, 238, 618 A.2d 501 (1992); accord Home Ins. Co. v. Aetna Life Casualty Co., 235 Conn.185, 200, 663 A.2d 1001 (1995); Feinberg v. Berglewicz, 32 Conn. App. 857, 862, 632 A.2d 709, 711 (1993); Gibbons v. NER Holdings, Inc., 983 F. Supp. 310, 319 (D. Conn 1997). To state a claim for breach of the covenant of good faith and fair dealing, a plaintiff either "must allege either that an enforceable employment contract exists, or that the employer's actions in discharging the employee violated a recognized public policy." Cowen v. Federal Express Corp., 25 F. Supp. 2d 33, 37 (D. Conn 1998). Tatusko has not alleged that she held an employment contract with GE, nor does she deny GE's assertion that her employment was at will. Therefore, the Court will apply the public policy analysis applicable to at-will employees in evaluating Tatusko's complaint.

The Connecticut Supreme Court has written of its "adherence to the principle that the public policy exception to the general rule allowing unfettered termination of an at-will employment relationship is a narrow one. . . ." Thibodeau v. Design Group One Architects, LLC, 260 Conn. 691, 701, 802 A.2d 731 (2002) (quoting Parsons v. United Techs. Corp., 243 Conn. 66, 79, 700 A.2d 655 (1997)). A plaintiff must allege that his or her termination violated an "explicit statutory or constitutional provision" or another "judicially conceived notion of public policy." Id. at 699.

Tatusko's complaint invokes no specific public policy that she alleges was violated by her termination. In her memorandum in opposition to the motion to dismiss, however, Tatusko argues that the defendant is a publicly traded company and that her termination violated the public policy against defrauding shareholders. GE responds that if Tatusko is arguing that she was terminated for acting as a corporate whistleblower on shareholder fraud, she has other federal remedies available under the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, and is therefore precluded from bringing a common law claim for breach of the covenant of good faith and fair dealing. See, e.g., Blantin v. Paragon Decision Res., Inc., 2004 U.S. Dist. LEXIS 17605, *4 (D. Conn. Aug. 31, 2004) ("Under Connecticut law, a plaintiff may bring a wrongful discharge action based on a violation of public policy. However, such an action is disallowed where the plaintiff has an[other] available statutory remedy.")

It is unclear whether Tatusko can ultimately prevail on her claim of breach of the covenant of good faith and fair dealing. For the defendant to prevail on a Rule 12(b)(6) motion to dismiss, however, it must appear beyond doubt that Tatusko could prove no set of facts which would entitle her to relief. The Court does not find that GE has met this burden. Nor does the

Court find it beyond doubt that Tatusko's claim is precluded by the Sarbanes-Oxley Act. That conclusion by GE assumes facts not in evidence here. Therefore, the Court finds that Tatusko has alleged facts sufficient to survive the motion to dismiss.

III. Conclusion

The defendant's Motion to Dismiss [Doc. # 5] is DENIED. This ruling is without prejudice to the defendant filing a motion for summary judgment.

So ordered this __12th__ day of September 2005 at Hartford, Connecticut.

__/s/ CFD_____
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE